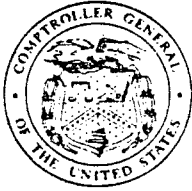


DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-184570

DATE: July 29, 1976

MATTER OF: Technology Incorporated

DIGEST:

In light of contracting officer's reasonable range of discretion in determination of which proposal is to be accepted for award, GAO will not object to selection of higher priced, higher scored contractor with direct marine experience emphasized in RFP evaluation formula since technical evaluation panel determined that lower priced, lower scored proposer without direct marine experience presented greater risk of project failure.

Technology Incorporated (Technology) protests the award by the Department of Commerce, Maritime Administration, of firm fixed price contract No. 5-38066 to Teledyne Materials Research (Teledyne) for planning and coordination of instrumentation for the US/USSR Cooperative Research Program in Ocean Wave Spectra and Loads on Ships at Sea. Technology claims that its lower-priced proposal was improperly and unfairly evaluated.

Technology submitted both price and technical proposals in response to the solicitation and a best and final offer of \$22,290. Thereafter, Technology was informed that an award had been made to Teledyne, whose best and final offer was \$26,900. At a debriefing held at its request, Technology learned that its proposal was considered deficient essentially because of its relative lack of direct marine experience. On the basis of information obtained at the debriefing, Technology filed its timely protest with this Office.

Technology alleges that the agency's technical evaluation incorrectly stressed the importance of experience in actual, physical installation of shipboard sensing devices. While admitting that Teledyne does, in fact, have considerable experience in this area, Technology states that it has, and Teledyne lacks, extensive experience in managing multi-million dollar contracts and in the installation of strain measuring devices in severe environments. Such experience, Technology argues, was not properly considered in the technical evaluation, particularly

in view of the intent to negotiate all future phases of the program with the awardee. Technology states that future phases involve complexities in instrumentation and logistics calling for capabilities which it has and Teledyne allegedly lacks. In addition, Technology maintains that a review of the technical evaluation file demonstrates that after evaluation and prior to the submission of best and final offers the agency intended to award it the contract. Technology alleges that when the program manager was apprised of this intent, another technical evaluation was conducted wherein Technology was declared technically unacceptable. Technology feels that this was improper and the selection of the higher priced offer along with a prior effort to award the procurement to Teledyne on a sole source basis demonstrates a predisposition toward Teledyne. Technology requests that the award to Teledyne be set aside and a new contract awarded.

The solicitation sets out three technical evaluation criteria having a total maximum value of 100 points. The third factor (the first two were problem understanding and capability) was described as follows:

"Experience (50 points) - This is a measure of the proposer's background in directly related instrumentation work, particularly of a marine nature. A total understanding of installation and operating problems in the marine environment and the ability to anticipate and minimize unexpected technical problems is a major consideration."

It is clear from the face of the solicitation that experience was given half of the total weight in the rating system. Furthermore, the solicitation indicates that emphasis would be placed on understanding actual installation and technical problems in a marine environment.

The evaluation committee considered the proposals in accordance with the formula stated in the RFP and prepared two memoranda for the contracting officer. The first, dated June 26, 1975, concluded that the Teledyne proposal was significantly superior, although the protester's proposal and one other were considered technically acceptable. The second memorandum, dated June 30, 1975, states the position of the evaluation committee "concerning a contract specialist's opinion that, based on price, it appeared that the award should go to Technology, Incorporated."

In this memorandum the committee explained why direct marine experience was considered so crucial as to justify a weight of 50 percent in the evaluation scheme. The panel concluded with respect to the Technology proposal:

"It is felt that a lack of marine experience compounded the risks of failure beyond an acceptable level and therefore recommend that the level of acceptability be drawn below the Teledyne proposal. It was felt that these technical considerations must override any differences in cost."

Award was then made to Teledyne based on the panel's recommendation even though Teledyne offered a higher price than the protester.

The possibility that award might not be made to the lowest priced offer was clearly enunciated in the solicitation:


"Award will be made to that offeror (1) whose proposal is technically acceptable and (2) whose technical/price relationship is the most advantageous to the Government; * * * Price will be a significant factor in the award decision, although the award may not necessarily be made to that offeror submitting the lowest price."

We have indicated, however, that if a lower priced, lower scored offer meets the Government's needs, acceptance of a higher priced, higher scored offer should be supported by a specific determination that the technical superiority of the higher priced offer warrants the additional cost involved in the award of a contract to that offeror. 51 Comp. Gen. 153, 161 (1971) and Bell Aerospace Company, B-183463, September 23, 1975, 75-2 CPD 168. It appears that the technical evaluation panel met for a second time to consider the contract specialist's opinion that Technology, based on price, should be awarded the contract. The panel reiterated the rationale for establishing marine experience as a top priority in the evaluation. It was noted that instrumentation in a marine environment had problems all its own and that even companies with extensive marine background experience numerous failures as they learn the methodology of instrumentation in the marine environment. Other areas of concern pinpointed as important were planning and the techniques of installation and maintenance of equipment.

In the light of these considerations the panel concluded that award to a firm without direct marine experience would compound the risks of failure beyond an acceptable level. The panel determined that Teledyne offered the most advantageous technical/price relationship since that firm possessed significant direct marine experience. The panel advised that this technical consideration overrode any difference in cost between the Teledyne proposal and the other lower scored proposals. The contracting officer apparently interpreted the panel's memorandum of June 30, 1975, as declaring all proposals other than Teledyne's to be technically unacceptable. In fact, the memorandum states that only the Teledyne proposal presents an acceptable level of risk of failure. In any event, the contracting officer determined that Teledyne's proposal was most advantageous to the Government in the light of the importance of direct marine experience and the significant risk of failure in the absence of such experience. We believe that this determination was consistent with the panel's findings and the contracting officer's range of discretion in this area. See, for example, METIS Corporation, 54 Comp. Gen. 612, 614 (1975), 75-1 CPD 44.

History may demonstrate that the agency would have been better advised--especially in view of the apparent intent to negotiate future phases of the program with the incumbent contractor--to emphasize in the evaluation formula the factors Technology urges in lieu of specific marine experience. The fact is, it did not. The technical evaluation formula clearly emphasizes the specific experience. Technology does not deny that Teledyne meets this requirement to a much greater extent than it does. Our function in this area is limited to determining whether (1) procedural requirements have been followed, (2) the evaluation formula is properly set out in the RFP, and (3) the award comports with the evaluation formula and reason. We find the standards have been met here.

Based on the record before us we are unable to conclude that the contracting officer abused his discretion in selecting Teledyne for award. Accordingly, the protest of Technology, Inc. must be denied.


Deputy Comptroller General
of the United States